

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF FIRE)	
FIGHTERS, LOCAL 2665,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 2003-013
)	
MAPLEWOOD FIRE DEPARTMENT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 2000. The matter before the State Board of Mediation arises from the filing by the International Association of Fire Fighters, Local 2665 (hereinafter referred to as the Union) of a petition to represent certain employees of the Maplewood Fire Department, (hereinafter referred to as the Department). In its petition the Union sought to represent all firefighters and Lieutenants excluding the Fire Chief and staff. The Department maintained that the Lieutenants were supervisors and should not be included in the bargaining unit.

A hearing on this matter was held on January 28, 2003, in Maplewood, Missouri, at which representatives of the Union and the Department were present. The case was heard by State Board of Mediation Chairman John A. Birch, Employee Member Patrick Hickey, and Employer Member Jay Schulteheinrich. At the hearing, the parties were given full opportunity to present evidence and make their arguments. During the hearing, the Union orally amended its petition to read all "firefighters and Lieutenants, excluding Captains, Assistant Chief, Chief, and all other employees, guards, [and] supervisors." (Tr. 180). The parties filed briefs in this

matter. After a careful review of the evidence and the arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The City of Maplewood is a municipality within the State of Missouri. The City has a city-manager form of Government. The City Manager is Martin Corkin.

The City has a fire department. The Fire Department provides fire protection within the geographic boundaries of the City. The Department also provides mutual fire protection aid to other cities within the surrounding area. The City's Director of Public Safety oversees the Fire Department.

In addition to the Director of Public Safety, the Fire Department has twenty employee positions, as follows: one Fire Chief, one Assistant Fire Chief, two Captains, four Lieutenants, and twelve Privates. At the time of hearing, the position of Fire Chief was vacant. Assistant Fire Chief Charles Joseph Granda was the Acting Fire Chief. Additionally, at the time of the hearing, one of the Captain positions was vacant. In the future, the City plans on filling the Fire Chief and Captain positions. The Department will operate without an Assistant Fire Chief.

The Fire Chief is the Executive Officer of the Fire Department. As such, he is in charge of all Department activities including fire fighting and fire prevention. However, the Fire Chief consults with the Director of Public Safety concerning the Department's daily operations and expenditures. The Fire Chief works forty hours per week (eight hours per day, five days per week).

The Fire Department is located in the City Hall Building. Within the Fire Department's facilities are sleeping quarters. The sleeping quarters contain seven beds. There are no separate sleeping quarters for officers. The Fire Department's facilities also contain a kitchen or cooking area.

In addition, the Fire Chief and the Captain have offices within the Department's facilities. The Department's records and petty cash fund are maintained within the Chief's office. Whenever, the Assistant Fire Chief is absent the Chief's office remains locked. The Captain has a key to the Chief's office. The Captain keeps the key in his locker. If a Lieutenant is the Shift Officer (the Senior Officer on duty), the Lieutenant may, if necessary, access the Fire Chief's office by retrieving the key from the Captain's office. The Lieutenant can access the Department's records to fill Sunshine Law requests and can access the Department's petty cash fund to make small emergency purchases. However, according to a Department standard operating procedure, the Assistant Fire Chief or City Manager is to be notified prior to the Shift Officer making an emergency purchase. Additionally, the Assistant Fire Chief normally completes all purchase orders.

When the Lieutenants serve as Shift Officers, they maintain Department records regarding daily operations. They also conduct new employee orientation. However, the Senior Privates also conduct new employee orientation.

The Captain normally prepares the duty schedule. However, Lieutenants have prepared the duty schedule at times when the Captain is on vacation.

Additionally, a few of the Privates have been trained regarding the completion of the Department's payroll forms. Every two weeks, on a Monday morning, some of the Privates complete the payroll forms. The Assistant Fire Chief then approves the payroll forms. The Lieutenants and the Captain do not complete the payroll forms.

The Department has three vehicles: one pumper fire truck, one rescue vehicle, and the Fire Chief's car. They are housed within the Fire Department's facilities at City Hall.

The Fire Department's personnel are divided into two fire crews. The fire crews are denominated A and B. Each fire crew is composed of one Captain, two Lieutenants, and six Privates. Since the Captain position on Crew A is currently vacant, the Assistant Fire Chief is

temporarily assigned to Crew A. The Captain on a fire crew is the Executive Officer of the crew. As such, the Captain on each fire crew is directly responsible to the Fire Chief for the action of the Officers and Privates under his jurisdiction.

The fire crews work twenty-four hour shifts. The shifts begin at 8:00 a.m. and end at 8:00 a.m. The Department operates the fire crews on a twenty-eight day schedule. Each fire crew is scheduled for duty fourteen days during the twenty-eight day schedule. Each Officer and Private assigned to a fire crew works nine days of the fourteen days his fire crew is scheduled for duty. Each Officer and Private assigned to a fire crew works fifty-three hours per week.

The on-duty crew generally consists of five individuals (two Officers and three Privates). The Senior Officer on duty is the Shift Officer. During a twenty-eight day schedule, the Assistant Fire Chief and Captain serve as the Shift Officer a total of eighteen days. The Senior Lieutenants serve as the Shift Officer ten days during the twenty-eight day schedule. On rare occasions (approximately two percent of the time), no Officer will be on duty and a Private will serve as the Shift Officer.

The Department had approximately six hundred fire calls during calendar year 2002. However, the Department had very few active working fires.

The Department's pumper fire truck has seating for five individuals. The driver of the truck is generally a Private. The driver acts as Engineer at the fire scene and is responsible for getting the truck in position to deliver water to the firefighters. The Engineer also assists the Shift Officer. The Shift Officer rides in the front passenger seat of the truck. The Shift Officer serves as the Incident Commander at the fire scene. The Incident Commander is in charge of the fire scene. The three remaining members of the fire crew (generally a Lieutenant and two Privates) ride in the back seats of the truck. These three individuals actually fight the fire.

At the fire scene, the Incident Commander makes a quick assessment of the situation. The Incident Commander then directs the firefighters to go into the building and conduct fire fighting operations. The Incident Commander remains outside of the building, continues to monitor the situation, and directs the fire fighting operations. The Incident Commander communicates with the firefighters inside the building by means of a walkie-talkie.

Inside the building the Lieutenant or a Senior Private will lead the firefighters in fighting the fire. As part of fighting the fire, the firefighters search for the “seat” of the fire and extinguish the blaze. Inside the building, the firefighters may also conduct other operations such as search and rescue or check for fire spread. The Lieutenant or a Senior Private will lead the firefighters in conducting these other operations. Because of their greater experience, the Lieutenants and Senior Privates are better able to direct the Privates in fighting fires and conducting other operations.

The Privates are all well-trained firefighters. St. Louis County requires all firefighters be trained at the fire academy. All of the Department personnel are also certified emergency medical technicians or paramedics. In addition, the Department’s personnel receive training each day in accordance with the training schedule developed by the Department’s Training Officer. Based upon their training and experience, the Privates know their jobs and require little supervision.

Like the Privates, the Lieutenants are highly qualified firefighters. The Lieutenants tend to have more years of service and experience than the Privates. Generally, the Lieutenants also have more training than Privates. The Fire Department prefers that the Lieutenants complete fire officer and command training through the fire academy or through on-the-job training.

On all first alarm calls within the City, a mutual aid fire company from a neighboring city will automatically respond to assist the Department. If further assistance is needed, the

Incident Commander (except a Private serving as Incident Commander) may strike additional alarms to bring additional mutual aid fire companies to the scene. Furthermore, if the Maplewood fire crew has been on the scene of a working fire for an extended period of time, dispatch will call a mutual aid fire company to staff the Maplewood fire station.

Whenever mutual aid is called to the scene of a fire within the City of Maplewood, the Incident Commander for the Maplewood Fire Department will remain in charge of the fire scene. The Senior Officer of the mutual aid fire company will act as Crew Chief of the mutual aid company and lead the company's firefighters in completing the tasks assigned by the Incident Commander.

The Department also has a protocol that requires dispatch to notify the Fire Chief of all working fires. The Fire Chief, depending on the magnitude of the fire, may respond to the scene. Upon the Fire Chief's arrival at the scene, the Chief may assume command of the fire scene or he may choose to leave the Shift Officer in charge as Incident Commander. If the Fire Chief leaves the Shift Officer in charge of the scene, the Chief may assist the Shift Officer by serving as Safety Officer and monitoring the situation.

The majority of the Department's calls are emergency medical calls. The rescue vehicle is used for emergency medical first response. Ordinarily, two Privates staff the rescue vehicle. One Private is the driver. The other Private is designated as the attendant. The attendant is primarily responsible for the care of the patient. On an emergency medical call the attendant is in charge at the scene. Even if a superior Officer responds to the scene, the attendant remains in charge of the medical emergency.

The City has developed Standard Operating Procedures (SOPs) for the Fire Department. SOPs are required instructions on how the firefighters are to perform their job duties and tasks. There are SOPs on a wide variety of topics from fire fighting to long distance telephone calls. Each SOP is numbered and all of the SOPs have been assembled in a

manual. When the Department hires a new firefighter, he or she must review the SOP manual and sign a document stating that he or she has reviewed the manual. The instructions set forth in the SOPs are mandatory. The firefighters are required to follow the SOPs and, therefore, no independent judgment on the part of the firefighters is required. The Shift Officer is responsible for seeing that tasks are completed in accordance with the SOPs.

The Department has also established a daily routine for each day of the week that must be followed by Department personnel. The fire crew on duty completes the tasks set forth in the applicable daily routine. Some duties, such as cleaning, are performed each day. Other duties are performed once a week. For example, each Tuesday the daily routine includes a complete service check on all Department vehicles and equipment. The Lieutenants participate in the daily routine. The Department also encourages the Lieutenants to help with house chores, such as cleaning, because it is good for morale. The Shift Officer is responsible for seeing that the daily routine tasks are completed.

The Lieutenants also assist with cooking and cleaning the kitchen. No individual within the Department is designated to cook. Cooking is a duty shared by all Department employees including the Officers. Additionally, no individual is assigned the duty of cleaning up after meals. Cleaning the kitchen is also a duty shared by all employees including the Officers.

The City has established a merit system for its employees. The salary structure for the Fire Department is set by the City Council. Each class of worker has a base salary. However, the City's merit system is structured such that an individual, based upon his or her annual employee evaluation, can receive from a one percent to seven percent annual salary increase. Therefore, employees, within the same job classification and with the same years of service, can be paid different salaries.

When a Department employee is promoted from Private to Lieutenant, the employee receives a pay increase. However, no evidence was presented as to the amount of the wage increase.

Lieutenants may issue orders and assign tasks to Privates. However, when an Officer of superior rank (Assistant Fire Chief, Captain, or Senior Lieutenant) is on duty, the Lieutenant must direct the Privates in accordance with the Senior Officer's orders.

A Department employee may be disciplined for failure to follow the orders of a superior Officer. A Lieutenant may issue a verbal reprimand to a Private for failing to carry out an order or for a breach in discipline. However, if a Senior Officer is on duty at the time the infraction occurs, the Lieutenant confers with the Senior Officer regarding the incident. Furthermore, if the Lieutenant believes the infraction is serious enough to warrant discipline greater than a verbal reprimand, such as a written reprimand, suspension, or discharge, the Lieutenant must refer the matter to the Captain or Assistant Fire Chief. The Lieutenants have no authority to issue a written reprimand to an employee, suspend an employee, or discharge an employee. Over the last five years, no Department employee has been issued a written reprimand, suspended, or discharged. Approximately six years ago, a Department employee was discharged for insubordination to a Lieutenant and other superior Officers. Under the city-manager form of government, only the City Manager has the authority to fire an employee based upon the formal recommendation of the department head. The Lieutenant involved in the matter recommended that the employee not be discharged. Despite the Lieutenant's recommendation, the Fire Chief recommended that the employee be discharged. The City Manager discharged the employee.

Likewise, under the city-manager form of government, only the City Manager has the authority to hire an employee. The department head makes a formal recommendation to the City Manager to hire an employee. In October 2002, the Fire Department hired a new

employee. The Assistant Fire Chief and two Lieutenants conducted formal interviews of the applicants. Thirteen applicants were chosen to interview for the position. Half of the applicants were interviewed during shift A and half the applicants were interviewed during shift B. On September 30, 2002, the Assistant Chief and Lieutenant Peter Ahl interviewed six of the applicants during shift A.¹ The Assistant Chief and Lieutenant Ahl each had a list of ten questions. They graded the six applicants separately on each question. The grades were combined and an average score was computed for each applicant. Following the formal interview, the Privates on shift A informally interviewed the applicants. The Privates ranked the applicants from one to six on a sheet of paper and the rankings were submitted to the Assistant Chief.

On October 1, 2002, during shift B, the Assistant Fire Chief and Lieutenant Raymond Holthausen interviewed the remaining seven applicants. The applicants were asked the same ten questions as were asked the applicants interviewed during shift A. The Assistant Chief and Lieutenant Holthausen graded the applicants separately on each question. The grades were combined and an average score was computed for each applicant. Following the formal interview, the Privates on shift B informally interviewed the applicants. The Privates ranked the applicants from one to seven on a sheet of paper and the rankings were submitted to the Assistant Chief. The Assistant Chief made the formal hiring recommendation to the City Manager and the City Manager hired the recommended applicant. These interviews in which Lieutenant Ahl and Lieutenant Holthausen participated is the only involvement any of the Lieutenants have had in the Department's hiring process.

Additionally, the Lieutenants have no authority to recommend the transfer of an employee. The Fire Department has not had any recommended transfers. However, the Department does yearly crew changes. To ensure fire crews of equivalent skill levels, crew

¹ The petition in this case was filed October 21, 2002.

changes are based upon seniority within the Department. Each member of fire crew A has a corresponding member on fire crew B. The corresponding members have similar length of service. While developing the transfer policy, the Assistant Fire Chief asked each Officer to give his recommendation concerning the composition of the fire crews. However, the Assistant Chief made the final decision concerning the fire crews.

Lieutenants also have no authority to promote an employee. Furthermore, while promotions are discussed among the Officers, the Lieutenants do not formally recommend the promotion of an employee.

Based upon the City's merit system, Department employees are evaluated twice a year. They receive a six-month evaluation and an annual evaluation. The six-month evaluation informs the employee of areas needing improvement. The annual evaluation determines whether or not the employee receives an annual salary increase and the size of that increase.

The Captain is primarily responsible for completing the employee evaluations on the Department's employees. However, in a few instances, Lieutenants have participated in the preparation of the Privates six-month evaluations. On rare occasions, Lieutenants have participated in preparing the Privates annual evaluations. All employee evaluations are ultimately approved or disapproved by the Assistant Fire Chief. If the Assistant Fire Chief disagrees with the evaluation, the Assistant Fire Chief returns the evaluation to the rater for changes.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all firefighters and Lieutenants, excluding Captains, Assistant Fire Chief, Fire Chief, guards, supervisors, and all other Department employees. The Department maintains that the Lieutenants are supervisors and should not be included in the bargaining unit. The Union, as the petitioning party, bears the

burden of proof in this case. *Central County Emergency 911 v. International Association of Firefighters, Local 2665*, 967 S.W.2d 696, 699 (Mo. App. 1998)

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 2000 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

While supervisors are not specially excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo. App. 1977) and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore, are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar, and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.²

² See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.³

Based upon the evidence adduced at the hearing, it is clear that the Lieutenants are not supervisors and therefore, should be included in the bargaining unit. The Lieutenants do not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of the other Fire Department employees. Under the city-manager form of government, only the City Manager may, based upon the formal recommendation of the department head, hire or fire an employee. With regard to the Fire Department, the Fire Chief (or in this case the Assistant Fire Chief) makes the formal recommendation to hire or fire a Department employee. The hiring interviews in which Lieutenant Ahl and Lieutenant Holthausen participated just prior to the filing of the petition in this case are the only involvement any of the Lieutenants have had in the Department's hiring process. As far as firing, the last Department employee termination occurred approximately six years ago. The Lieutenant involved in the matter recommended that the employee not be discharged. However, the employee was discharged.

Lieutenants also have no authority to promote an employee. Furthermore, while promotions are discussed among the Officers, the Lieutenants do not formally recommend the promotion of an employee. They also have no authority to recommend the transfer of an employee.

With regard to discipline, Lieutenants may issue verbal reprimands to Privates. However, if a Senior Officer is on duty at the time an infraction occurs, the Lieutenant confers with the Senior Officer regarding the incident. Furthermore, if the Lieutenant believes the

³ See, for example, *Monroe County Nursing Home District, dba Monroe Manor*, Case No. R 91-016 (SBM 1991).

infraction is serious enough to warrant discipline greater than a verbal reprimand the Lieutenant must refer the matter to the Captain or Assistant Fire Chief. The Lieutenants have no authority to issue a written reprimand to an employee or suspend an employee. This first factor indicates that the Lieutenants are not supervisors.

As for the second factor, Lieutenants may issue orders and assign tasks to Privates. However, when an Officer of superior rank is on duty, the Lieutenant must direct the Privates in accordance with the Senior Officer's orders. Furthermore, the Lieutenants do not exercise a substantial amount of independent judgment and discretion in the supervision of employees. The City has developed SOPS for the Fire Department that cover a wide variety of tasks from fire fighting to long distance telephone calls. These procedures are mandatory and no independent judgment is required on the part of the Lieutenants. Additionally, the Department has developed a daily routine for each day of the week. These routines are mandatory. The tasks outlined in the daily routines must be completed. The Lieutenants are not required to exercise independent judgment or discretion with regard to the daily routine. Additionally, the Lieutenants can only write or change the duty schedule if the Captain is absent and a change in the schedule becomes necessary.

With regard to fire fighting, as indicated previously, there is a SOP setting forth the fire fighting procedures. Additionally, mutual aid automatically responds on all one-alarm fire calls. Dispatch automatically notifies the Fire Chief on all working fires. Furthermore, if the Maplewood fire crew has been on the scene of a working fire for an extended period of time, dispatch will call a mutual aid fire company to staff the Maplewood fire station. Clearly, little discretion or independent judgment is required of the Lieutenants with regard to fire fighting. The second factor also indicates that the Lieutenants are not supervisors.

Furthermore, if the four Lieutenants were determined to be supervisors, then the Fire Department would have seven supervisors to supervise twelve employees. This would be an

inordinately low number of employees for each supervisor. See, *Central County Emergency 911 v. International Association of Firefighters, Local 2665*, 967 S.W.2d at 701. See also, *International Brotherhood of Electrical Worker, Local 53 v. City of Harrisonville*, Public Case No. R 95-034, 10 (SBM 1996). Additionally, the Lieutenants have very little discretion to direct and control the other employees within the Department. Generally, the Lieutenants have authority to act only in the absence of the Assistant Fire Chief and Captain. Furthermore, the Captain, Assistant Fire Chief, Public Safety Director, and City Manager all have vastly greater authority than the Lieutenants. Given the Lieutenants' position in the City's hierarchy, it appears entirely appropriate to place them in the bargaining unit. Therefore, the third factor indicates that the Lieutenants are not supervisors.

The Lieutenants are paid for their skills and not for their supervision of the Department's employees. While a Private receives a pay raise upon being promoted to Lieutenant, there was no evidence as to the amount of that pay raise. In addition, the Lieutenants are highly qualified firefighters. The Lieutenants tend to have more years of service and experience than the Privates. They also generally have more training than the Privates. This combination of experience and training make the Lieutenants better able to lead the Privates in fire fighting and other related operations. This fourth factor indicates that the Lieutenants are not supervisors.

With regard to the fifth factor, the Lieutenants primarily supervise activities, not employees. The Privates are highly trained and they know their jobs. The Privates need little supervision. As Shift Officers, the Lieutenants are responsible for seeing that the tasks set forth in the daily routines are completed. They are also responsible for seeing that those tasks are completed in accordance with the Department's SOPs. The Privates are highly trained firefighters. Therefore, at fire scenes, the Privates require only minimal direction from the Officers. The fifth factor indicates that the Lieutenants are not supervisors.

Additionally, the Lieutenants are working supervisors. The Lieutenants fight fires alongside the Privates. The Lieutenants participate in the daily routine. The Lieutenants are also encouraged to assist with house chores such as cleaning. The Lieutenants assist with cooking meals and cleaning the kitchen. At times, the Lieutenants respond on medical emergency calls. This sixth factor indicates that the Lieutenants are not supervisors.

A review of the factors demonstrates that the Lieutenants do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. They are more analogous to lead workers. We, therefore, conclude that in this case the Lieutenants are not supervisors.

The case *International Association of Fire Fighters, Local 2709 v. Liberty Fire Department of Liberty Missouri*, Public Case No. 80-006 (SBM 1980), relied on by the Department, is distinguishable from this case. The authority of the Captains in the *Liberty* case is more equivalent to the authority of the Captain in the present case. There is no dispute among the parties in this case that the Captain is a supervisor. The dispute in this case is over the Lieutenants. In the *Liberty* case, the Captains were full-time Shift Officers. In this case, the Senior Lieutenants only serve as Shift Officers in the absence of the Assistant Fire Chief and Captain. The two junior Lieutenants would appear to seldom serve as Shift Officer. In the *Liberty* case, the Captains could reject job applicants during the first stage of the hiring process. In the present case, two of the Lieutenants participated in the interview process only one time. There is no indication in the record that the two Lieutenants have the authority to reject job applicants outright. It is also not lost upon the majority that the two Lieutenants' participation in the interview process came about just prior to the filing of the petition in this case. Additionally, there is no evidence that the junior Lieutenants have ever participated in the hiring process. In the *Liberty* case, the Captains participated regularly in the evaluation of the firefighters. In this case, the Lieutenants' participation in the evaluation process is sporadic. In the *Liberty* case,

the Captains could issue written reprimands. In the present case, the Lieutenants cannot issue written reprimands. In short, the Captains in the *Liberty* case maintained their authority at all times. In the present case, the Lieutenants generally have authority to act only in the absence of a superior Officer. The *Liberty* case is clearly distinguishable from the present case.

Based upon the foregoing, we hold that a bargaining unit consisting of all Privates and Lieutenants, excluding Captains, Assistant Fire Chief, Fire Chief, guards, supervisors, and all other Department employees is an appropriate unit.

ORDER

The State Board of Mediation finds as follows:

- (1) That a bargaining unit consisting of all Privates and Lieutenants, excluding Captains, Assistant Fire Chief, Fire Chief, guards, supervisors, and all other Department employees is an appropriate unit.
- (2) That the Lieutenants are not supervisors within the meaning of the Missouri Public Sector Labor Law.
- (3) That the Lieutenants are included in the bargaining unit.
- (4) An election is ordered in the bargaining unit set forth in this order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees

who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have the International Association of Fire Fighters, Local 2665 as their exclusive bargaining representative.

The Department shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 18th day of July, 2003.

STATE BOARD OF MEDIATION

(SEAL)

John Birch, Chairman

Patrick Hickey, Employee Member

Dissenting Opinion Filed
Jay Schulteheinrich, Employer Member

Dissenting Opinion

I dissent from the majority opinion holding that all of the Lieutenants are not supervisors. Based upon my review of the record, briefs, and applicable law, I am of the opinion that the Lieutenants who regularly perform Captain duties are supervisors and should be excluded from the bargaining unit.

Currently the City of Maplewood has one of its two Captain positions vacant. Both parties agreed in their testimony that they consider the position of Captain to be supervisory, and therefore, requests that such position not be included in the bargaining unit. No testimony was provided indicating how long the position of Captain will remain vacant or how long the Lieutenants will regularly assume the role of Captain. Through testimony and presented documentation, a Lieutenant, when in the absence of the Captain of the crew, becomes the Executive Officer of the crew and assumes all duties/responsibilities of the Captain. At least one Lieutenant, and possibly two, are currently spending a significant amount of time assuming the role of Captain as the Executive Officer of the crew clearly in a supervisory capacity. When a Lieutenant assumes the role of Captain, such Lieutenant assumes not only the function of supervising the Privates, but also the other Lieutenant on the crew. It is clear that certain Lieutenants, when filling in for the vacant position of Captain, perform supervisory functions while another Lieutenant on the crew is performing in a non-supervisory manner. The Union is requesting all the Lieutenants to be included in the bargaining unit as their functions are closer to that of a Private or non-supervisory employee. However, putting all of the Lieutenants in the bargaining unit at this time would be placing individuals who are clearly performing a substantial amount of time in a supervisory capacity into a non-supervisory bargaining unit. Therefore, under the current circumstances involved this case and based upon the testimony presented, I

would hold that the Lieutenants who regularly perform Captain duties are supervisors and I would exclude those Lieutenants from the bargaining unit.

Jay Schulteheinrich, Employer Member